

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

**FILE:** B-220593 **DATE:** January 28, 1986  
**MATTER OF:** DSP Technology, Inc.

## DIGEST:

1. Specifications are not unduly restrictive of competition where the agency presents a reasonable explanation of why the specifications are necessary to meet its minimum needs and the protester fails to show that the restrictions are clearly unreasonable.
2. The General Accounting Office has no legal basis to question the use of specifications that allegedly are not restrictive enough to meet an agency's needs.
3. Bid preparation costs and the cost of pursuing a protest will not be granted where the General Accounting Office finds no violation of applicable statutes or regulations.

DSP Technology, Inc. protests the terms of invitation for bids (IFB) No. DNA002-85-B-0121, issued September 4, 1985 by the Defense Nuclear Agency (DNA). The protester alleges that the specifications are unduly restrictive of competition.

We deny the protest.

The IFB solicited bids for five data recorder systems with an option for five additional units. This equipment is to be used for recording high explosive test results at White Sands Missile Range, New Mexico. DSP contends that DNA's specifications can only be met by a system produced by Pacific Instruments, Inc., citing 25 requirements that it believes are based upon the Pacific Instruments system and are not justified by the actual needs of the agency.

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For example, DSP complains that it is unnecessary for the IFB to specify (1) the "protocol" or exact manner in which the system's controller is to communicate with its recorder; (2) that all connectors must be mounted on the rear of the rack enclosure; and (3) that the recorder enclosures must be 7 inches in height. These requirements are all present in the Pacific Instruments system.

When a protester challenges specifications as unduly restrictive of competition, the procuring agency bears the burden of presenting prima facie support for its position that the restrictions are necessary to meet its actual minimum needs. This requirement reflects the agency's obligation to create specifications that permit full and open competition to the extent consistent with the agency's actual needs. 10 U.S.C.A. § 2305(a)(1) (West Supp. 1985). The determination of the government's minimum needs and the best method of accommodating those needs are primarily matters within the contracting agency's discretion. Bataco Industries, Inc., B-212847, Feb. 13, 1984, 84-1 CPD ¶ 179. Consequently, once the agency establishes support for the challenged specifications, the burden shifts to the protester to show that the specifications in dispute are clearly unreasonable. Sunbelt Industries, Inc., B-214414.2, Jan. 29, 1985, 85-1 CPD ¶ 113.

Specifications based upon a particular product are not improper in and of themselves, and an argument that a specification was "written around" design features of a competitor's product is not itself a valid basis for protest where the agency establishes that the specification is reasonably related to its minimum needs. Amray, Inc., B-208308, Jan. 17, 1983, 83-1 CPD ¶ 43. Nor is a specification improper merely because a potential bidder cannot meet its requirements.

In response to DSP's protest, the agency states that in 1984 it sought to replace its analog tape recording equipment by issuing a solicitation with general specifications for digital recording equipment. DNA purchased seven systems from the only bidder, Pacific Instruments. (According to the agency report, the protester was among the 21 prospective sources solicited, but it did not submit a bid.) Now, the agency seeks additional equipment that will be compatible with the Pacific Instruments systems.

DNA states that, even though admittedly more restrictive than the specifications used in 1984, the current specifications accurately reflect its legitimate, minimum needs. For example, DNA argues that the required protocol for communication between the controller and recorder is necessary to ensure compatibility between old and new equipment, and DNA provides examples of different protocols that would present communication problems. Regarding the requirement that all connectors be mounted on the rear of the rack enclosure, DNA maintains that experience at the test site has proven that rear mounting provides the most efficient arrangement for pre-cabling the instruments, which in turn reduces costs, eliminates wiring mistakes, and aids maintenance and access. Also, the agency argues that requiring recorder enclosures to be 7 inches in height insures mechanical and physical compatibility between the new and old systems, so that a unit may be removed for repair and replaced without the necessity for a substantial rearrangement of equipment.

Agencies may restrict competition where it can be shown that compatibility with existing government equipment is required. Sperry Univac, B-212914, Sept. 5, 1984, 84-2 CPD ¶ 255. In our opinion, the agency has made such a showing in this case.

DSP interprets the agency's statements that the specifications were intended to insure compatibility with existing equipment and standardization to mean that DNA intended to require complete interchangeability. The protester argues that the IFB did not indicate this intention and that the specifications included insufficient mechanical, physical, and dimensional characteristics of the existing Pacific Instruments equipment to permit other firms to provide a system that will be fully compatible and interchangeable. In the protester's opinion, DNA should have either prepared such specifications or conducted a sole source procurement with Pacific Instruments.

We find no evidence in the procurement record filed with our Office that DNA intended to impose compatibility requirements in addition to those stated in the specifications. As noted above, agencies are required to develop specifications to permit full and open competition, and we find no merit in an argument that the agency should have drafted more restrictive specifications in order to meet the protester's definition of the agency's minimum needs.

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Here, DNA drafted specifications that it believes will result in compatibility sufficient to meet the agency's needs, and we have no legal basis to question them. See Cincinnati Bell Telephone Co., 62 Comp. Gen. 124 (1983), 83-1 CPD ¶ 41; Drexel Heritage Furnishings, Inc., B-213169, Dec. 14, 1983, 83-2 CPD ¶ 686.

Since we have found no violation of applicable statutes or regulations, the protester is not entitled to its bid preparation costs or the cost of pursuing a protest with our Office. Feinstein Construction, Inc., B-218317, June 6, 1985, 85-1 CPD ¶ 648.

The protest is denied.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel